

Honorable Brian D. Lynch  
Hearing date: December 16, 2020  
Hearing time: 9:00 a.m.  
Response date: December 9, 2020  
Chapter 7  
Location: Telephonic

UNITED STATES BANKRUPTCY COURT  
WESTERN DISTRICT OF WASHINGTON

In re

No. 20-40514

COOKIE KINNEY,

MOTION TO APPROVE SETTLEMENT

Debtor.

**I. FACTS**

The debtor filed the present Chapter 7 Bankruptcy Petition on February 21, 2020. The debtor's Statement of Financial Affairs listed payments to National Debt Relief for debt consolidation services in the amount of "\$101.50, twice a month for the last year" in the one year prior to filing the Bankruptcy Petition, or the sum of approximately \$2,436. Based on documentation later produced to the Trustee by the debtor, the amount of the payments made to National Debt Relief LLC (hereinafter referred to as "NDR") in the one year period prior to the filing of the Bankruptcy Petition, before she canceled her account with NDR, totaled \$2,030. The Trustee believed that the payments made to NDR were either avoidable pursuant to 11 U.S.C. § 548 and/or that the fees retained by NDR, in the aggregate amount of \$711.69, were done so in violation of the Washington Debt Adjusting Act (RCW 18.28 *et seq*), which would also constitute a violation of the Washington Consumer Protection Act (RCW 19.86 *et seq*), entitling the estate to recover treble damages and attorney fees and costs if successful. Accordingly, an adversary proceeding to recover the transfers in question was filed on October

1 7, 2020. Counsel for NDR contacted the Trustee and offered to settle the estate's claims for  
2 payment in the amount of \$2,000.00, which the Trustee rejected, due to the strength of her  
3 claims, but the Trustee submitted a counteroffer in the amount of \$2,300.00, which NDR has  
4 accepted, subject to Court approval.  
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## 6 II. ISSUES

- 7 2.1 **Whether the settlement agreement is fair, reasonable and should be**  
8 **approved, after consideration of the four factors set forth in A & C**  
9 **Properties, 784 F.2d 1377 (9<sup>th</sup> Cir. 1986).**

## 10 III. DISCUSSION

- 11 3.1 **The compromise/settlement is fair, reasonable and should be approved.**

12 The Court has great latitude in approving compromise agreements and may approve a  
13 compromise if it is "fair and equitable." *In re Woodson*, 839 F.2d 619, 620 (9<sup>th</sup> Cir.1988). An  
14 order approving a compromise will be upheld absent abuse of discretion. *In re A & C*  
15 *Properties*, 784 F.2d 1377 (9<sup>th</sup> Cir. 1986).

16 To determine whether a compromise is fair and equitable, the Court should consider the  
17 probability of success in the litigation, the difficulties to be encountered in collection, the  
18 litigation's complexity and its attendant expense, inconvenience and delay, and the paramount  
19 interest of the creditors with a proper deference to their reasonable views. *In re MGS Marketing*,  
20 111 B.R. 264 (9<sup>th</sup> Cir. BAP 1990); *In re Woodson, supra*; *In re A & C Properties, supra*.  
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22 A compromise should be approved if the Trustee establishes to the reasonable  
23 satisfaction of the Court that it is prudent to eliminate the risks and delays of litigation to achieve  
24 certainty rather than a possible ultimate recovery. *In re Central Ice Cream Co.*, 59 B.R. 476,  
25 487-488 (Bankr. N.D. Ill. 1985). The Court does not have to decide the numerous questions of  
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1 fact and law raised by objecting parties. *In re Heissinger Resources Ltd.* 67 B.R. 378, 383 (C.D.  
2 Ill, 1986). The Court's responsibility is to canvass the issues and see whether the settlement  
3 "falls below the lowest point in the range of reasonableness". *Id.*, citing, *In re W.T. Grant Co.*,  
4 699, F.2d 599, 608 (2<sup>nd</sup> Cir. 1983).

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6 The Trustee believes the settlement proposed is fair, reasonable, and in the best interest  
7 of the estate. In reaching the settlement, the Trustee considered the factors outlined in *In re A &*  
8 *C Properties*, 784 F.2d 1377 (9<sup>th</sup> Cir. 1986), as set forth below:

9 a. Probability of Success in Litigation

10 While NDR appeared informally through counsel and disputed the application of RCW  
11 18.28.080 (1) against NDR, the Trustee is confident that she would prevail on NDR's violation  
12 of the Debt Adjustment Act.

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14 b. Collection Difficulties

15 No collection difficulties were considered in this settlement as the settling party is  
16 believed to be solvent.

17 c. Complexity and cost of Litigation, inconvenience of delay

18 The adversary proceeding was only recently filed and any further litigation regarding the  
19 amount or the extent of the damages or award to be made would increase the cost of litigation  
20 and delay the resolution.

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22 d. Best Interest of Creditors

23 Costs of administration will be greatly reduced if this settlement agreement is approved.  
24 Enhancing the amount of the distribution by the estate by the reduction of such costs, and  
25 avoiding further delay in the distribution is in the best interest of creditors.  
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#### IV. SUMMARY

Given (1) the complexity, expenses and likely duration of litigation; (2) the balance between the likelihood of success compared to the present and future benefits offered by the litigation; (3) the risk of establishing liability and damages; (4) the relative benefits achieved through settlement; (5) the proportion of the Bankruptcy Class that are believed will support the settlement; and (6) the range of reasonableness of the settlement fund in light of all the attendant risks of litigation, the Trustee submits that the settlement should be approved.

DATED this 6<sup>th</sup> day of November, 2020.

By: /s/ Kathryn A. Ellis  
Kathryn A. Ellis, WSBA #14333  
Attorney for Trustee

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